

Application No.: 09/325963

Case No.: 54664US002

### **Remarks**

Claims 1-16, 18-24, 29-33, and 35 are pending in this application. Claims 1-12 and 18-24 have been withdrawn from consideration. Claims 13-16, 29-33, and 35 have been rejected. By this response, Applicants amend claims 29 and 31, and cancel claims 13-16 and 35. Applicants respectfully request reconsideration of the rejected claims in light of the amendments and the following remarks.

### **Claim Amendment**

Independent claim 29 has been amended to recite that the article includes a three-layer structure comprising a core foam layer and two non-foam outer skin layers, wherein at least one of the skin layers has a thickness sufficient to prevent rupture of the skin layer when cells of the underlying foam layer are ruptured. The outer skin layers have also been more precisely defined. Support for this amendment is found, for example, on page 6, lines 1-14; page 7, lines 5-10; page 10, lines 20-32; page 14, lines 26-32; and page 15, lines 1-10 of the present specification. Dependent claim 31 has been amended to correct the dependency so that it now depends from claim 2. No new matter is added by this amendment.

### **§103 Rejection of claims 13-15, 31, and 35 as being unpatentable over Lindquist**

Claims 13-15, 31, and 35 stand rejected under 35 U.S.C. § 103(a) as obvious over Lindquist et al. (U.S. Patent No. 3,665,918). All of these claims, with the exception of claim 31, have been canceled. Claim 31 has been amended to depend from claim 29. Accordingly, this rejection may now be withdrawn.

### **§103 Rejection of claims 13-16 as being unpatentable over Walther**

Claims 13-16 and 35 stand rejected under 35 USC § 103(a) as being unpatentable over Walther (U.S. Patent No. 5,905,097). All of these claims have been canceled so this rejection may now be withdrawn.

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**§103 Rejection of claims 29, 30, 32, and 33 as being unpatentable over Lindquist in view of Pufahl**

Claims 29, 30, 32, and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lindquist (U.S. Patent No. 3,665,918) in view of Pufahl (U.S. Patent No. 4,169,184). Applicants respectfully traverse this rejection as applied to the amended version of the claims.

In order to establish a *prima facie* case of obviousness, the Patent Office must demonstrate that (1) there is a suggestion or motivation in the prior art to modify or combine reference teachings, (2) one skilled in the art would have had a reasonable expectation of success in making the modification or combination, and (3) the prior art reference(s) disclose all of the claim limitations. The fact that one of ordinary skill in the art would have had the capability to modify the method disclosed in the prior art reference(s) is not sufficient. MPEP 2143.01. The prior art reference(s) must provide a motivation or reason for making the changes. MPEP 2142; *Ex parte Chicago Rawhide Manufacturing Co.*, 226 USPQ 438 (PTO Bd. App. 1984)

Claim 29 has been amended to be directed to an article having a three-layer structure comprising a core foam layer and two outer skin layers, wherein one of the skin layers has a thickness sufficient to prevent rupture of the skin layer when the underlying foam cells are ruptured by stretching of the article. As acknowledged by the Examiner, Lindquist fails to describe a three-layer ABA structure (see Paper No. 14, P. 10). However, the Examiner has previously asserted that a three-layer structure would have been obvious because Pufahl describes a foam substrate coated with a pressure sensitive acrylic resin adhesive. The Examiner concludes in Paper No. 14 that it would have been obvious to use the foam layer of Lindquist and coat it with adhesive on both sides as described by Pufahl to provide a three-layer structure as claimed. However, the amended version of claim 29 recites that at least one of the skin layers is of a thickness such that it is capable of not rupturing even when the core foam layer is ruptured by stretching. There is nothing in Pufahl or Lindquist that teaches or suggests or provides any motivation for a foam substrate having two outer skin layers comprising a thermoplastic material, elastomer, or semi-crystalline polymer, wherein one of the outer layers has a thickness that would prevent rupture of the outer layer when the inner foam core is ruptured. Since Pufahl does not describe the essential elements that are lacking from Lindquist, these references even in combination fail to teach or suggest all of the claim limitations. Thus, this combination of references does not render the claimed invention obvious.

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**Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance. Reconsideration of the application is requested.

All communications in this case should be direct to the undersigned. If the Examiner believes a telephone discussion would be helpful to resolve any of the outstanding issue in this case, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

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Date

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